

104TH CONGRESS  
1ST SESSION

# H. R. 613

To amend the Internal Revenue Code of 1986 to impose penalties on self-dealing between certain tax-exempt organizations and disqualified persons, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 1995

Mr. MENENDEZ introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to impose penalties on self-dealing between certain tax-exempt organizations and disqualified persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Exemption  
5 Accountability Act”.

1 **SEC. 2. PENALTIES ON SELF-DEALING BY CHARITIES AND**  
2 **CERTAIN OTHER TAX-EXEMPT ORGANIZA-**  
3 **TIONS.**

4 (a) IN GENERAL.—Part I of subchapter B of chapter  
5 68 of the Internal Revenue Code of 1986 (relating to gen-  
6 eral provisions) is amended by adding at the end the fol-  
7 lowing new section:

8 **“SEC. 6716. SELF-DEALING BY CHARITIES AND CERTAIN**  
9 **OTHER TAX-EXEMPT ORGANIZATIONS.**

10 “(a) INITIAL PENALTIES.—In the case of an act of  
11 self-dealing between a disqualified person and an applica-  
12 ble tax-exempt organization—

13 “(1) ON THE ORGANIZATION.—There is hereby  
14 imposed a penalty equal to the product of—

15 “(A) the amount involved in the act of self-  
16 dealing, and

17 “(B) the highest rate of tax specified in  
18 section 11.

19 The penalty imposed by this paragraph shall be paid  
20 by the organization with respect to which such act  
21 occurred.

22 “(2) ON THE MANAGEMENT.—There is hereby  
23 imposed on the participation of any organization  
24 manager of an organization in any act of self-dealing  
25 which occurs with respect to such organization,  
26 knowing that it is such an act, a penalty equal to

1       2½ percent of the amount involved with respect to  
2       such act for each year (or part thereof) in the tax-  
3       able period, unless such participation is not willful  
4       and is due to reasonable cause. The penalty imposed  
5       by this paragraph shall be paid by the organization  
6       manager who participated in the act of self-dealing.

7           “(3) ON THE BENEFICIARY.—There is hereby  
8       imposed on any self-dealing a penalty equal to 5 per-  
9       cent of the amount involved with respect to such act  
10      for each year (or part thereof) in the taxable period.  
11      The penalty imposed by this paragraph shall be paid  
12      by the beneficiary (other than an organization man-  
13      ager acting only as such) of such act.

14      “(b) EXCEPTION.—If—

15      “(1) it is established to the satisfaction of the Sec-  
16      retary that a person otherwise required to pay a penalty  
17      under subsection (a) with respect to any act of self-dealing  
18      did not know that the act was an act of self-dealing,

19      “(2) the applicable tax-exempt organization  
20      submits to the Secretary, for each of the 3 calendar  
21      years following the calendar year in which the act  
22      occurred, a statement by a qualified independent  
23      auditor that such organization was described in  
24      paragraph (3) or (4) section 501(c) (as the case may

1 be) and exempt from tax under section 501(a) for  
2 each such year, and

3 “(3) such act is corrected within the taxable pe-  
4 riod,

5 then such penalty shall not be imposed on such person.

6 “(c) ADDITIONAL PENALTIES IF ACT NOT COR-  
7 RECTED.—

8 “(1) ON THE MANAGEMENT.—In any case in  
9 which an additional penalty is imposed by paragraph  
10 (1), if an organization manager refused to agree to  
11 part or all of the correction, there is hereby imposed  
12 a penalty equal to 50 percent of the amount involved  
13 with respect to such act. The penalty imposed by  
14 this paragraph shall be paid by any organization  
15 manager who refused to agree to part or all of the  
16 correction.

17 “(2) ON THE BENEFICIARY.—In any case in  
18 which an additional penalty is imposed by paragraph  
19 (1), there is hereby imposed a penalty equal to 200  
20 percent of the amount involved with respect to such  
21 act. The penalty imposed by this paragraph shall be  
22 paid by the beneficiary (other than an organization  
23 manager acting only as such) of such act.

24 “(d) SELF-DEALING.—For purposes of this section—

1           “(1) IN GENERAL.—The term ‘self-dealing’  
2 means any direct or indirect—

3           “(A) sale or exchange, or leasing, of prop-  
4 erty between an applicable tax-exempt organiza-  
5 tion and a disqualified person;

6           “(B) lending of money or other extension  
7 of credit between an applicable tax-exempt or-  
8 ganization and a disqualified person;

9           “(C) furnishing of goods, services, or facili-  
10 ties between an applicable tax-exempt organiza-  
11 tion and a disqualified person;

12           “(D) payment of compensation (or pay-  
13 ment or reimbursement of expenses) by an ap-  
14 plicable tax-exempt organization to a disquali-  
15 fied person;

16           “(E) transfer to, or use by or for the bene-  
17 fit of, a disqualified person of the income or as-  
18 sets of an applicable tax-exempt organization;  
19 and

20           “(F) agreement to make any payment of  
21 money or other property to a government offi-  
22 cial (as defined in section 4946(c)), other than  
23 an agreement to employ such individual for any  
24 period after the termination of his government

1 service if such individual is terminating his gov-  
2 ernment service within a 90-day period.

3 “(2) SPECIAL RULES.—For purposes of para-  
4 graph (1)—

5 “(A) the transfer of real or personal prop-  
6 erty by a disqualified person to an applicable  
7 tax-exempt organization shall be treated as a  
8 sale or exchange if the property is subject to a  
9 mortgage or similar lien which the organization  
10 assumes or if it is subject to a mortgage or  
11 similar lien which a disqualified person placed  
12 on the property within the 10-year period end-  
13 ing on the date of the transfer;

14 “(B) the lending of money by a disquali-  
15 fied person to an applicable tax-exempt organi-  
16 zation shall not be an act of self-dealing if the  
17 loan is without interest or other charge (deter-  
18 mined without regard to section 7872) and if  
19 the proceeds of the loan are used exclusively for  
20 the exempt purposes of the organization;

21 “(C) the furnishing of goods, services, or  
22 facilities by a disqualified person to an applica-  
23 ble tax-exempt organization shall not be an act  
24 of self-dealing if the furnishing is without  
25 charge and if the goods, services, or facilities so

1 furnished are used exclusively for the exempt  
2 purposes of the organization;

3 “(D) the furnishing of goods, services, or  
4 facilities by an applicable tax-exempt organiza-  
5 tion to a disqualified person shall not be an act  
6 of self-dealing if—

7 “(i) such furnishing is made on a  
8 basis no more favorable than that on which  
9 such goods, services, or facilities are made  
10 available to the general public, and

11 “(ii) the value of the goods, services,  
12 or facilities so furnished in any transaction  
13 (or series of related transactions) does not  
14 exceed \$100;

15 “(E) except in the case of the payment of  
16 compensation to (or the payment or reimburse-  
17 ment of expenses of) a government official (as  
18 defined in section 4946(c)), the payment of  
19 compensation (and the payment or reimburse-  
20 ment of expenses) by an applicable tax-exempt  
21 organization to a disqualified person for per-  
22 sonal services which are reasonable and nec-  
23 essary to carrying out the exempt purpose of  
24 the organization shall not be an act of self-deal-

ing if the compensation (or payment or reimbursement)—

“(i) is not excessive, and

“(ii) is at an annual rate not in excess of the rate in effect under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule);

“(F) any transaction between an applicable tax-exempt organization and a corporation which is a disqualified person, pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if—

“(i) there is a market on an established securities market or otherwise for any stock in such corporation, and

“(ii) all of the securities of the same class as that held by the organization are subject to the same terms and such terms provide for receipt by the organization of no less than fair market value;

“(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—



1           “(i) prizes and awards which are sub-  
2           ject to the provisions of section 74(b)  
3           (without regard to paragraph (3) thereof),  
4           if the recipients of such prizes and awards  
5           are selected from the general public,

6           “(ii) scholarships and fellowship  
7           grants which would be subject to the provi-  
8           sions of section 117(a) (as in effect on the  
9           day before the date of the enactment of the  
10          Tax Reform Act of 1986) and are to be  
11          used for study at an educational organiza-  
12          tion described in section 170(b)(1)(A)(ii),

13          “(iii) any annuity or other payment  
14          (forming part of a stock-bonus, pension, or  
15          profit-sharing plan) by a trust which is a  
16          qualified trust under section 401,

17          “(iv) any annuity or other payment  
18          under a plan which meets the requirements  
19          of section 404(a)(2),

20          “(v) any contribution or gift (other  
21          than a contribution or gift of money) to, or  
22          services of facilities made available to, any  
23          such individual, if the aggregate value of  
24          such contributions, gifts, services, and fa-  
25          cilities to, or made available to, such indi-

1           vidual during any calendar year does not  
2           exceed \$25,

3           “(vi) any payment made under chap-  
4           ter 41 of title 5, United States Code, or

5           “(vii) any payment or reimbursement  
6           of traveling expenses for travel solely from  
7           one point in the United States to another  
8           point in the United States, but only if such  
9           payment or reimbursement does not exceed  
10          the actual cost of the transportation in-  
11          volved plus an amount for all other travel-  
12          ing expenses not in excess of 125 percent  
13          of the maximum amount payable under  
14          section 5702 of title 5, United States  
15          Code, for like travel by employees of the  
16          United States; and

17          “(H) the leasing by a disqualified person  
18          to an applicable tax-exempt organization of of-  
19          fice space for use by the organization in a  
20          building with other tenants who are not dis-  
21          qualified persons shall not be treated as an act  
22          of self-dealing if—

23               “(i) such leasing of office space is  
24               pursuant to a binding lease which was in

1 effect on October 9, 1969, or pursuant to  
2 renewals of such a lease;

3 “(ii) the execution of such lease was  
4 not a prohibited transaction (within the  
5 meaning of section 503(b) or any cor-  
6 responding provision of prior law) at the  
7 time of such execution; and

8 “(iii) the terms of the lease (or any  
9 renewal) reflect an arm’s-length trans-  
10 action.

11 “(e) OTHER DEFINITIONS.—For purposes of this  
12 section—

13 “(1) APPLICABLE TAX-EXEMPT ORGANIZA-  
14 TION.—The term ‘applicable tax-exempt organiza-  
15 tion’ means any organization which (without regard  
16 to any act of self-dealing) would be described in  
17 paragraph (3) or (4) of section 501(c) and exempt  
18 from tax under section 501(a).

19 “(2) DISQUALIFIED PERSON.—

20 “(A) IN GENERAL.—The term ‘disqualified  
21 person’ means, with respect to any trans-  
22 action—

23 “(i) any person who was an organiza-  
24 tion manager at any time during the 5-

1 year period ending on the date of such  
2 transaction.

3 “(ii) any member of a family (as de-  
4 fined in section 4946(d)) of any person de-  
5 scribed in clause (i),

6 “(iii) any 5-percent controlled entity  
7 of persons described in clauses (i) and (ii),  
8 and

9 “(iv) any government official (as de-  
10 fined in section 4946(c)).

11 “(B) SPECIAL RULE FOR PRIVATE FOUN-  
12 DATIONS.—With respect to any transaction in-  
13 volving a private foundation—

14 “(i) the term ‘disqualified person’ in-  
15 cludes a substantial contributor (as defined  
16 in section 4946(a)(2)) to such foundation  
17 and any person described in section  
18 4946(a)(1)(C) with respect to such a con-  
19 tributor, and

20 “(ii) such substantial contributor shall  
21 be treated as described in clause (i) of sub-  
22 paragraph (A) for purposes of applying  
23 this section with respect to such founda-  
24 tion.

1           “(3) ORGANIZATION MANAGER.—The term ‘or-  
2           ganization manager’ means, with respect to any ap-  
3           plicable tax-exempt organization—

4                   “(A) any officer, director, or trustee of  
5                   such organization (or any individual having  
6                   powers or responsibilities similar to those of of-  
7                   ficers, directors, or trustees of the organiza-  
8                   tion), and

9                   “(B) with respect to any act (or failure to  
10                  act), the employees of the organization having  
11                  authority or responsibility with respect to such  
12                  act (or failure to act).

13          “(4) 5-PERCENT CONTROLLED ENTITY.—

14                  “(A) 5-PERCENT CONTROLLED ENTITY.—  
15          The term ‘5-percent controlled entity’ means—

16                   “(i) a corporation in which persons  
17                   described in subparagraph (A) or (B) of  
18                   paragraph (2) own more than 5 percent of  
19                   the combined voting power,

20                   “(ii) a partnership in which such per-  
21                   sons own more than 5 percent of the prof-  
22                   its interest, and

23                   “(iii) a trust or estate in which such  
24                   persons own more than 5 percent of the  
25                   beneficial interest.

1                   “(B)       CONSTRUCTIVE       OWNERSHIP  
2       RULES.—Rules similar to the rules of para-  
3       graphs (3) and (4) of section 4946(a) shall  
4       apply for purposes of this paragraph.

5                   “(5) TAXABLE PERIOD.—The term ‘taxable pe-  
6       riod’ means, with respect to any act of self-dealing,  
7       the period beginning with the date on which the act  
8       of self-dealing occurs and ending on the earliest of—

9                   “(A) the date of mailing a notice of defi-  
10       ciency with respect to the penalty imposed by  
11       subsection (a)(1) under section 6212,

12                   “(B) the date on which the penalty im-  
13       posed by subsection (a)(1) is assessed, or

14                   “(C) the date on which correction of the  
15       act of self-dealing is completed.

16                   “(6) AMOUNT INVOLVED.—The term ‘amount  
17       involved’ means, with respect to any act of self-deal-  
18       ing, the greater of the amount of money and the fair  
19       market value of the other property given or the  
20       amount of money and the fair market value of the  
21       other property received; except that, in the case of  
22       services described in subsection (d)(2)(E), the  
23       amount involved shall be only the excess compensa-  
24       tion. For purposes of the preceding sentence, the  
25       fair market value—

1           “(A) in the case of the taxes imposed by  
2           subsection (a), shall be determined as of the  
3           date on which the act of self-dealing occurs;  
4           and

5           “(B) in the case of the taxes imposed by  
6           subsection (c), shall be the highest fair market  
7           value during the taxable period.

8           “(7) CORRECTION.—The terms ‘correction’ and  
9           ‘correct’ mean, with respect to any act of self-deal-  
10          ing, undoing the transaction to the extent possible,  
11          but in any case placing the applicable tax-exempt or-  
12          ganization in a financial position not worse than  
13          that in which it would be if the disqualified person  
14          were dealing under the highest fiduciary standards.

15          “(f) SPECIAL RULES.—

16          “(1) JOINT AND SEVERAL LIABILITY.—If more  
17          than one person is liable under any paragraph of  
18          subsection (a) or (c) with respect to any one act of  
19          self-dealing, all such persons shall be jointly and sev-  
20          erally liable under such paragraph with respect to  
21          such act.

22          “(2) MINISTERS.—Clause (ii) of subsection  
23          (d)(2)(E) shall not apply to compensation paid by a  
24          church to a duly ordained, commissioned, or licensed

1 minister thereof for the performance of sacerdotal  
2 duties.”

3 (b) REVOCATION OF EXEMPTION OF CERTAIN CHAR-  
4 ITIES FOR ACTS OF SELF-DEALING.—Section 501 of such  
5 Code is amended by redesignating subsection (n) as sub-  
6 section (o) and by inserting after subsection (m) the fol-  
7 lowing new subsection:

8 “(n) REVOCATION OF EXEMPTION OF CERTAIN  
9 CHARITIES FOR ACTS OF SELF-DEALING.—

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), an organization which would (without re-  
12 gard to any act of self-dealing) be described in para-  
13 graph (3) or (4) of subsection (c) shall not be ex-  
14 empt from tax under subsection (a) if there is any  
15 act of self-dealing between such organization and  
16 any person who is a disqualified person (as defined  
17 in section 6716(e)) with respect to such organiza-  
18 tion.

19 “(2) EXCEPTION.—Paragraph (1) shall not  
20 apply to an organization if—

21 “(A) there has been no prior act of self-  
22 dealing by such organization (or any prede-  
23 cessor), and

24 “(B) the Secretary determines that revoca-  
25 tion of such exemption is inappropriate.



1 In making the determination under subparagraph  
2 (B), the Secretary shall take into account the extent  
3 and duration of the self-dealing, the amount in-  
4 volved, and whether such self-dealing was corrected  
5 in a timely manner.

6 “(3) SELF-DEALING.—For purposes of this sub-  
7 section, the term ‘self-dealing’ has the meaning  
8 given such term by section 6716(d).”

9 (c) APPLICATION OF PRIVATE INUREMENT RULE TO  
10 ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—  
11 Paragraph (4) of section 501(c) of such Code is amended  
12 to read as follows:

13 “(4)(A) Civic leagues or organizations not orga-  
14 nized for profit but operated exclusively for the pro-  
15 motion of social welfare and no part of the net earn-  
16 ings of which inures to the benefit of any private  
17 shareholder or individual.

18 “(B) Local associations of employees—

19 “(i) the membership of which is limited to  
20 the employees of a designated person or persons  
21 in a particular municipality,

22 “(ii) which is operated exclusively for char-  
23 itable, educational, or recreational purposes,  
24 and

1           “(iii) no part of the net earnings of which  
2           inures to the benefit of any private shareholder  
3           or individual.”

4           (d) REPEAL OF EXCISE TAX ON SELF-DEALING BY  
5 PRIVATE FOUNDATIONS.—Section 4941 of such Code is  
6 hereby repealed.

7           (e) CLERICAL AMENDMENTS.—

8           (1) The table of sections of part I of subchapter  
9 B of chapter 68 of such Code is amended by adding  
10 at the end the following new item:

                  “Sec. 6716. Self-dealing by charities and certain other tax-exempt  
                  organizations.”

11           (2) The table of sections of subchapter A of  
12 chapter 42 of such Code is amended by striking the  
13 item relating to section 4941.

14           (f) EFFECTIVE DATE.—

15           (1) IN GENERAL.—The amendments made by  
16 this section shall apply to transactions after the date  
17 of the enactment of this Act.

18           (2) EXCEPTION FOR CERTAIN COMPENSATION  
19 PAID PURSUANT TO BINDING CONTRACTS.—Clause  
20 (ii) of section 6716(d)(2)(E) of the Internal Revenue  
21 Code of 1986 (as added by this section) shall not  
22 apply to compensation which is paid—

23                   (A) before the date which is 2 years after  
24 the date of the enactment of this Act, and

1 (B) pursuant to a contract which is bind-  
2 ing on January 1, 1995, and at all times there-  
3 after before the date such compensation is paid.

4 **SEC. 3. INCREASE IN PENALTIES FOR FAILURE TO FILE**  
5 **TIMELY ANNUAL RETURNS REQUIRED BY**  
6 **SECTION 6033 AND TO PERMIT TIMELY IN-**  
7 **SPECTION OF SUCH RETURNS.**

8 (a) INCREASE IN PENALTY.—The material following  
9 clause (ii) of section 6652(c)(1)(A) of the Internal Reve-  
10 nue Code of 1986 (relating to returns by exempt organiza-  
11 tions and certain trusts) is amended to read as follows:  
12 “there shall be paid by the exempt organization an amount  
13 equal to 3 percent of its gross receipts (for the year for  
14 which such return is required to be filed) for each 30-day  
15 period (or portion thereof) that such failure continues.”

16 (b) INCREASE IN PENALTY FOR FAILURE TO PERMIT  
17 PUBLIC INSPECTION OF ANNUAL RETURNS.—Subpara-  
18 graph (C) of section 6652(c)(1) of such Code is amended  
19 by striking “\$10” and inserting “\$25”.

20 (c) EFFECTIVE DATES.—

21 (1) SUBSECTION (a).—The amendment made  
22 by subsection (a) shall apply to returns the due date  
23 for which (determined without regard to any exten-  
24 sion of time filing) is after the date of the enactment  
25 of this Act.

1           (2) SUBSECTION (b).—The amendment made  
2       by subsection (b) shall apply to requests made more  
3       than 180 days after the date of the enactment of  
4       this Act.

5   **SEC. 4. NATIONAL CLEARINGHOUSE FOR ACCESS TO AN-**  
6                   **NUAL RETURNS OF EXEMPT ORGANIZATIONS,**  
7                   **ETC.**

8       (a) IN GENERAL.—The Secretary of the Treasury or  
9       his delegate shall establish a clearinghouse from which in-  
10      dividuals may inspect or receive copies of annual returns  
11      filed under section 6033 of the Internal Revenue Code of  
12      1986 by organizations to which subsection (d) or (e)(1)  
13      of section 6104 of such Code applies. Inspection shall be  
14      permitted without charge, and copies shall be provided  
15      without charge other than a reasonable fee for any repro-  
16      duction and mailing costs.

17      (b) PERIOD OF AVAILABILITY.—Copies of a return  
18      shall be available under subsection (a) only during the 3-  
19      year period beginning on the last day prescribed for filing  
20      such return (determined with regard to any extension of  
21      time for filing).

22      (c) NO INSPECTION REQUIRED AT REGIONAL OR  
23      DISTRICT OFFICES AFTER CLEARINGHOUSE ESTAB-  
24      LISHED.—After the date of the clearinghouse is estab-  
25      lished under subsection (a), no organization shall be re-

1 quired to permit inspections under section 6104(e)(1) of  
2 such Code at any regional or district office.

3 (d) AUTHORIZATION.—There are authorized to be ap-  
4 propriated such sums as may be necessary to carry out  
5 this section.

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